

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Warren E. Kaari,

Complainant,

vs.

Barbara Johnson,

Respondent.

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING**

TO: Warren E. Kaari (Complainant) and Barbara Johnson (Respondent).

On November 18, 2009, Warren Kaari filed a campaign complaint with the Office of Administrative Hearings alleging that Minneapolis City Councilmember Barbara Johnson violated Minnesota Statutes § 211B.12 by using money collected by her campaign for non-permitted personal expenditures.

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint sets forth *prima facie* violations of Minnesota Statutes § 211B.12. This determination is described in more detail in the attached Memorandum.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for a prehearing conference and an evidentiary hearing, to be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101.

Pursuant to Minn. Stat. § 211B.35, the evidentiary hearing must be held within 90 days of the date the complaint was filed.

You will be notified of the dates and times of both the prehearing conference and evidentiary hearing, and the three judges assigned to hear this matter, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law

Judges. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judges (3) and the opposing party.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55101, or call 651-361-7900 (voice) or 651-361-7878 (TTY).

Dated: November 20, 2009

/s/ Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

MEMORANDUM

Respondent Barbara Johnson was recently re-elected to a fourth term on the Minneapolis City Council Ward 4. The Complaint alleges that Ms. Johnson violated Minn. Stat. § 211B.12 by using money collected for her campaign on personal expenditures, such as haircuts and dry cleaning. The Complainant attached a copy of a November 4, 2009 article that appeared in the *City Pages*, wherein Ms. Johnson concedes charging her campaign fund for dry-cleaning, haircuts, internet and cable television service, and AAA coverage for her car.

Minnesota Statutes § 211B.12 governs campaign expenditures. It provides as follows:

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

- (1) salaries, wages, and fees;
- (2) communications, mailing, transportation, and travel;
- (3) campaign advertising;

- (4) printing;
- (5) office and other space and necessary equipment, furnishings, and incidental supplies;
- (6) charitable contributions of not more than \$50 to any charity annually; and
- (7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

For purposes of a *prima facie* determination, the Complainant must detail the factual basis to support a claim that the violation of law has occurred.¹ In deciding whether a campaign complaint sets forth a *prima facie* violation of the statute, the Administrative Law Judge is required to credit as true all of the facts that are alleged in the Complaint, provided that those facts are not patently false or inherently incredible. The Administrative Law Judge concludes that the Complainant in this matter has alleged sufficient facts to support finding *prima facie* violations of Minn. Stat. § 211B.12. The issue to be determined is whether Ms. Johnson's expenditures were for permitted political purposes reasonably related to the conduct of her election campaigns, or whether the funds were converted to personal use in violation of the statute. The Administrative Law Judge notes, however, that complaints brought under Minnesota Statutes Chapter 211B are subject to a one-year statutory limitation.² Therefore, the panel will consider only those expenditures at issue that occurred within one year of the filing of this complaint. Moreover, at the hearing, the Complainant will have the burden to establish the violations by a preponderance of the evidence.³ With these understandings, the allegations will proceed to an evidentiary hearing before a three-judge panel to be scheduled in the near future.

M.J.C.

¹ Minn. Stat. § 211B.32, subd. 3.

² Minn. Stat. § 211B.32, subd. 2.

³ Minn. Stat. § 211B.32, subd. 4.